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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,243	01/26/2004	Michelle M. Haag	B-IP03003	1752
7590	12/12/2006		EXAMINER	
Cary W. Brooks #704 51194 Romeo Plank Rd. Macomb, MI 48042			TOMPKINS, ALISSA JILL	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/765,243	HAAG, MICHELLE M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alissa J. Tompkins	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 August 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-30 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/26/2004</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

It is noted by the Examiner that the Election/Restriction has been withdrawn in view of the applicant's arguments. All claims have been examined.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust (U.S. 4,009,495). Faust discloses an undergarment comprising a top opening with a waistband, a front panel, back panel, a second panel, and two leg openings. The undergarment can be in the form of a panty or a brief (Column 2, 18). It is noted by the examiner that panties do not cover the thigh of a wearer, while some forms of briefs do cover the thigh of the wearer. The front panel covers at least a portion of the abdomen of the wearer. The front panel 1 has a plurality of first threads knitted of stretch nylon or similar synthetic stretch material (Column 1, 25-26). Attached to the front panel is a second panel 2, that has a plurality of second threads comprising cotton. The second panel 2 covers at least a portion of the crotch area of the wearer. The second panel along with the sides of the front panel are integrally knitted with cotton to provide a high

degree of ventilation (Column 1, 28-29). Also attached to the front panel and to the second panel is a back panel, comprising a plurality of third threads. The back panel covers the rear of the wearer. The back panel is made of a synthetic material such as nylon. It is well known in the art that the first, second, and third threads would be formed in a repeating pattern to provide an opening between threads of each pattern. The undergarment of Faust has a mesh opening on the second panel that is 10 times more than the mesh openings of the front panel (Column 2, 23-24). It is noted by the Examiner that the Applicant's specification does not provide any criticality as to why the openings in the second panel have to be between 2-9/3-8/3-6 times greater than the average area of the openings of the front panel, so as such, Faust's undergarment provides a very high degree of ventilation to genital parts of the body that tend to perspire (Column 1, 53-54). The undergarment therefore has a front panel that is sufficiently tight in comparison to the second panel, allowing overgarments to slide easily over the front panel.

As for claims 5 and 7, it is well known that panty hose are often worn in place of traditional undergarments, and a thong type panty is often worn in place of a traditional panty. Since these alternatives are well known to a person having ordinary skill in the art, it would have been obvious to make these modifications.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hasegawa et al. (U.S. 6,807,685), Braunstein (U.S. 5,416,929), Williams (U.S. 4,236,257), and Bregstein et al. (U.S. 4,067,068) show undergarments in the form of panties. Pyatt et al. (U.S. 6,074,274) shows an undergarment in the form of shorts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272-3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit: 3765

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Alissa Tompkins  
Patent Examiner  
Art Unit 3765  
December 7, 2006

AJT



GARY L. WELCH  
PRIMARY EXAMINER